

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 941 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

M L GANDHI

Versus

ASHOKBHAI V SONI

Appearance:

MS VASUBEN P SHAH for Petitioners
MR SHALIN MEHTA, for Respondent No. 1
MR MAJGAONKAR for Respondent No. 2
MR KT DAVE, AGP for Respondent No. 3 & 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 23/06/2000

ORAL JUDGEMENT

None appears for the petitioners when the matter
is called out.

2. In this petition under Article 227 of the
Constitution, the petitioner college management has
challenged the judgment and order dated 18.8.1987

(Annexure "L") of the Gujarat Affiliated Colleges Services Tribunal at Ahmedabad in Application No. 1 of 1985. The petitioner has also prayed for a writ of mandamus to the Director of Education and the State of Gujarat to reimburse the salary paid by the petitioner to respondent No. 1 for the period from 22.7.1984 till 14.11.1984 and also for a further period from 15.11.1984 to 31.12.1985.

3. The petitioner college management had advertised for the post of a Part-time Lecturer and held interviews on 11.7.1984. The selection committee selected respondent No. 1 for the said post subject to the approval of the Gujarat University and the Director of Higher Education. The appointment order, issued and communicated to the petitioner on 22.7.1984, mentioned that the appointment was purely on temporary basis for one year i.e. from 23.7.1984 to 7.4.1985 and was subject to the approval of the Gujarat University and the Director of Higher Education. The petitioner's request to approve the appointment of respondent No. 1 was granted by the Gujarat University, but the similar request was turned down by the Director of Higher Education on the ground that the college did not fulfill the quota reserved for the teachers belonging to Scheduled Castes and Scheduled Tribes. The college management pleaded that it was under the impression that the reservation quota did not apply to the part-time teaching staff, but the said representation was not accepted. Hence, the college management called upon respondent No. 1 to submit his resignation as his appointment was not approved. Ultimately when respondent No. 1 did not tender the resignation, the petitioner college management terminated the services of respondent No. 1 by letter dated 14.11.1984 (Annexure "I"). Thereafter another person (Mr R.P. Patel) was appointed on 2.1.1985 as a Part-time Lecturer in Statistics. Said R.P. Patel expired and, therefore, the college management again advertised for the post and Mr D.M. Dave came to be appointed on 29.8.1986.

When respondent No. 1 challenged the termination order dated 14.11.1984 before the Tribunal, the Tribunal held the termination to be illegal, but did not pass any order for reinstatement as respondent No. 1 had already secured a job elsewhere. The Tribunal, however, awarded backwages for the period from 15.11.84 to 31.12.85. The college management has thereupon filed the present petition for the aforesaid reliefs.

4. During pendency of the petition, this Court

passed the interim order under which the college management was required to deposit the entire amount as per the Tribunal's judgement and respondent No. 1 was permitted to withdraw the amount on furnishing security to the satisfaction of the Registrar.

5. Although none appears for the petitioners, the Court has perused the papers and noted the contention raised in the petition that when the appointment of respondent No. 1 was temporary and more particularly when it was made clear that the appointment was conditional because the appointment was subject to the approval by the Gujarat University and Director of Higher Education, the termination of services of such an employee on account of non-approval of either of the authorities was not required to be preceded by an inquiry and that the Tribunal erred in holding that even in cases of such termination, an inquiry was required to be held.

6. The Tribunal referred to the following provisions of Section 14 of the Gujarat Affiliated Colleges Services Tribunal Act, 1981 and observed as under :-

"This Tribunal has consistently held by interpreting the various provisions which apply to the college teachers of Gujarat University that in a clearly vacant substantive post temporary appointment cannot be made. The appointment on such a post is required to be made on probation. This Tribunal has also held that even if in the appointment order the appointment is described as temporary if the appointment is on a clearly vacant substantive post, it is required to be considered an appointment on probation. It is also settled that Sec. 14(1) of the Act applies in the case of probationers. In the instant case, it is admitted that the applicant was not appointed on any leave vacancy created because of some lecturers proceeding on leave or deputation. Therefore, the applicant's appointment is required to be considered as on probation. When the applicant is thus considered as a probationer Sec. 14(1) of the Act will apply in his case and his services could not have been terminated without following the mandatory provisions of the requirement of reasonable opportunity to show-cause and previous approval of the Vice-Chancellor. On this short ground the impugned order of termination dated 14.11.84 at Ex. F is required to be quashed and set aside."

7. However in the facts and circumstances of the case, termination of services of respondent No. 1 which was sought to be made only on the ground that the appointment of respondent No. 1 was in the first place conditional and that condition having not been fulfilled, there was no full-fledged appointment or in any case the appointment was not complete.

8. Of course, the Tribunal has also dealt with this facet of the argument and observed that it was a matter between the college management and the Director of Higher Education and that if the college management made the appointment pending approval of the Government authorities, the college management must take that risk and shoulder the burden of salary of the employee who was employed in contravention of the quota for reserved categories. The Tribunal, however, seems to have overlooked the factual aspects that when an educational institution receives 100% salary grant, the selection committee includes a representative each of the Director of Higher Education and the University and that even when such representatives are present, the approval of the University and the Director of Higher Education is required to be obtained by the college management. This process takes some time and in the meantime since the academic studies begin, if the college were to wait for the approval, the studies of the students would suffer and the syllabus cannot be completed in the current year after the teacher is appointed. Another relevant fact is that the college would be able to get the sanction for an appointment of a teacher only when there is sufficient workload and this would become clear only after the college re-opens in June.

9. This Court is, therefore, of the view that the provisions of Section 14 of the Act would not apply to a situation like the present one where the appointment of the teacher was subject to the condition of the appointment being approved by the University and the Director of Higher Education and when this condition is not fulfilled on account of either or both of the authorities refusing to grant the permission. The question of holding any inquiry as contemplated by Section 14(1) would not arise unless, of course, the objection was on the ground of lack of educational qualification or experience of the teacher and any doubt is raised about the adequacy or otherwise of such qualification or experience on which issue the concerned teacher may have some say. Hence, the termination order was not illegal on the ground that no inquiry was held.

10. Now the only question that remains for consideration is whether the direction of the Tribunal requiring the college management to pay respondent No. 1 arrears of salary for the period between 15.11.1994 and 31.12.1985 should be set aside or whether the Director of Higher Education and the State Government should be required to reimburse the college management for the salary paid to respondent No. 1 between August and November, 1984 and also for the subsequent period during which the Tribunal awarded backwages.

11. Mr KT Dave, learned AGP has submitted that the prayer for reimbursement should not be granted because the college management had not filled in the quota of the reserved posts. The stand of the college management in the pleadings and also before the Tribunal was that they were of the bona fide belief that the reservation did not apply to part-time posts. In view of the fact that the belief appears to be bona fide and also in view of the fact that the Director of Higher Education and State Government have nowhere pointed out that a qualified candidate belonging to SC/ST category was available for the post of a teacher in Statistics and also in view of the fact that respondent No. 1 did render services as part-time lecture in Statistics in the petitioner college, this Court is of the view that interests of justice demand that the Director of Higher Education and the State Government be directed to reimburse the petitioner college management for the salary paid to respondent No. 1 between August and November, 1984 and also for the subsequent period for which the Tribunal has awarded backwages.

It is directed accordingly.

12. The petition is accordingly partly allowed in terms of the aforesaid direction.

Rule is made absolute. There shall be no order as to costs.

(M.S. Shah, J.)
sundar/-